

BRAE
CORPORATION

RECORDATION NO. 9875 Filed 1425

JUN 19 1980 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

June 16, 1980

Ms. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Office of the Secretary
S.E. Room 2215
Washington, DC 20423

9-171A014
JUN 19 1980
Date
Fee \$ 20.00
CC Washington, D. C.

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. § 11303 are several copies of a Fourth Amendment dated as of April 1, 1980 to the Equipment Trust Agreement dated as of November 1, 1978, as amended by a First Amendment dated as of March 1, 1979, a Second Amendment dated as of August 1, 1979 and a Third Amendment dated as of February 1, 1980 which relate to the railroad equipment described on and marked in accordance with Schedule A to this letter.

The names and addresses of the parties to the document described above are as follows:

Company: BRAE Corporation
Three Embarcadero Center
San Francisco, CA 94111

Trustee: Morgan Guaranty Trust
Company of New York
30 West Broadway
New York, NY 10015

The Equipment Trust Agreement dated as of November 1, 1978 between Morgan Guaranty Trust Company of New York, as Trustee, and Brae Corporation was duly filed and recorded on November 30, 1978 under Recordation No. 9875, as amended by a First Amendment dated as of March 1, 1979 which was duly filed and recorded under Recordation No. 9875-G, by a Second Amendment dated as of August 1, 1979 which was duly filed and recorded under Recordation No. 9875-H and by a Third Amendment dated as of February 1, 1980 which was duly filed and recorded under Recordation No. 9875-V.

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Please file and record the enclosed document assigning it the first subletter available under Recordation No. 9875, and cross-index the document under the names listed above. For BRAE Corporation, please also cross-index under the names Brae Corporation and BraeLease Corporation.

Enclosed is a check payable to the Interstate Commerce Commission in the amount of \$20.00, the prescribed fee for filing and recording the enclosed document.

Please return to the person presenting this letter your letter confirming such filing and recordation, your fee receipt therefor and all copies of the enclosed document not required for filing stamped with your pertinent filing information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael T. Everett".

Michael T. Everett
Assistant Secretary

Enclosures

SCHEDULE A

<u>Lessee</u>	<u>No. of Boxcars To Be Under Lease</u>	<u>No. of Boxcars Which Are Trust Equipment</u>	<u>Date of Lease</u>	<u>Term</u>	<u>Trust Equipment Identification Numbers (Both Inclusive)</u>
Oregon, Pacific & Eastern Railway Company	100 XM	100 XM	3/29/78	15 Years	OPE 15101- OPE 15200
Ashley, Drew & Northern Railway Company	300 XM 300 XP	300 XM 300 XP	6/23/78	15 Years	ADN 9400-9699 ADN 5600-5899
Port of Tillamook Bay	150 XM	50 XM	3/8/78	15 Years	POTB 101-150
Delta Valley & Southern Railway Company	100 XM	50 XM	7/21/78	15 Years	DVS 1001-1050
Galveston Wharves	1000 XM	200 XM	6/26/78	15 Years	GWF 1001-1200
Sierra Railroad Company	50 XM	50 XM	7/14/78	15 Years	SERA 5000-5049
East St. Louis Junction R.R. Co.	100 XM	50 XM	5/18/78	15 Years	ESLJ 7700-7712 ESLJ 7714-7750

<u>Lessee</u>	<u>No. of Flatcars To Be Under Lease</u>	<u>No. of Flatcars Which Are Trust Equipment</u>	<u>Date of Lease</u>	<u>Term</u>	<u>Trust Equipment Identification Numbers (Both Inclusive)</u>
Mississippi & Skuna Valley RR Co.	100 FB	50 FB	7/12/79	15 Years	MSV 435-MSV 484

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INTERSTATE COMMERCE COMMISSION

FOURTH AMENDMENT dated as of April 1, 1980 to Equipment Trust Agreement dated as of November 1, 1978, as amended by a First Amendment dated as of March 1, 1979, a Second Amendment dated as of August 1, 1979 and a Third Amendment dated as of February 1, 1980, and as supplemented by a Waiver dated as of January 7, 1980 and a Waiver dated as of March 7, 1980 (as so amended and supplemented, the "Equipment Trust Agreement") between MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as trustee (the "Trustee"), and BRAE CORPORATION (the "Company").

Recitals

The Company has requested that the Trustee amend the Equipment Trust Agreement as more completely described below. The Trustee has received a Written Direction to execute this Amendment from each of the Original Purchasers, which at the present time collectively hold 100% in principal amount of the outstanding Trust Certificates.

Section 9.03 of the Equipment Trust Agreement provides for amendment of the Equipment Trust Agreement under such circumstances.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. The terms used in this Amendment which are defined in the Equipment Trust Agreement shall have the same meanings herein as specified therein.

2. The definition of Consolidated Shareholders' Equity appearing on pages 9-10 of the Equipment Trust Agreement as originally executed is amended by the addition of the phrase "(other than Investments, provided that 35% of the amount of any Investment described in clause (v) or (vi) of the definition of Investments shall in any event be subtracted)" after the word "investments" in the seventh line of said definition.

3. The definition of Investments appearing on pages 12-13 of the Equipment Trust Agreement as originally executed is amended by the deletion of the word "and" in the fourteenth line of such definition, by the deletion of the period at the end of such definition and the substitution of a comma therefor and by the addition of the following clauses thereafter:

"(v) any investments in any form (including, without limitation, purchases of voting stock, non-voting stock, shares of beneficial interest in a trust, loans, guarantees of indebtedness, capital contributions or contributions to a trust estate) whether made directly or through a Subsidiary (a) in an aggregate amount not exceeding \$13,125,000 at any time in the "Leasing Company" to be organized pursuant to the Project Agreement dated February 12, 1980 between PACCAR Inc., a Delaware corporation ("PACCAR"), and Brae Rail Venture Corporation, a California corporation, which is a wholly-owned subsidiary of the Company, which Leasing Company will be owned 90% by PACCAR and 10% by the Company and will carry on no business other than owning and leasing up to 9,400 railcars and activities related thereto; and (b) in an aggregate amount not exceeding \$2,820,000 at any time in a trust in which the Company or a Subsidiary is to have a 15% beneficial interest and Ford Motor Credit Company is to have an 85% beneficial interest and which trust will carry on no business other than owning and leasing approximately 1200 railcars with an aggregate original cost of approximately \$47,000,000 and activities related thereto; provided, however, that in all cases the Company shall, at the time such investment is made, have undertaken the actual management of the railcars owned by the corporation or trust in which the Company has made such investment, whether by management contract, informal arrangement or otherwise, and

"(vi) any investments in the form of voting stock, non-voting stock, preferred stock, options, warrants, or debt instruments convertible into any of the foregoing, in any of the six corporations identified to the Original Purchasers in a letter from the Company dated March 25, 1980;

provided, however, that any investment pursuant to this clause (vi) be limited to a transaction in which the anticipated investment would not exceed \$40,000,000 in the aggregate and would result in the acquisition of not less than a 15% interest in such corporation.

4. Section 6.05(c) of the Equipment Trust Agreement as originally executed (pages 57-58) is amended by the deletion of the word "and" in the sixth line of clause (vi), by the deletion of the semicolon at the end of clause (vii) and the substitution of a comma therefor followed by the addition of the word "and", and by the addition of the following clause:

"(viii) any Lien secured by all or part of the Investment described in clause (vi) of the definition of Investments and incurred in connection with the acquisition or carrying of such Investment; provided that (a) any such Lien shall not encumber any property of the Company or any Restricted Subsidiary except for such Investment, (b) the aggregate amount secured by all such Liens shall not exceed 50% of the amount of such Investment, and (c) the Debt secured by such Liens is permitted by Section 6.05(d);"

5. Section 8.04 of the Equipment Trust Agreement, appearing on page 72 of the Equipment Trust Agreement as originally executed is amended by the addition of the phrase "(other than Investments described in clause (v) or (vi) of the definition of Investments)" after the word "Investments" in each place in which it appears in such Section.

6. Except as modified hereby, the Equipment Trust Agreement shall remain in full force and effect.

7. The Company hereby covenants and agrees as follows:

(i) the Company will advise each of the Original Purchasers of the name of the corporation in which Investments have been made pursuant to clause (vi) of the definition of Investments at or immediately prior to the time at which the Company first publicly discloses its investment in such corporation; and

(ii) all Investments made by the Company pursuant to clause (vi) of the definition of Investments shall be made in compliance with Regulations G, T, U and X of the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 207, 220, 221 and 224).

8. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single instrument.

9. The provisions of this Amendment and all rights and obligations of the parties hereunder shall be governed by the laws of the State of New York.

10. The Company shall, at its expense, cause this Amendment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303, as soon as possible.

11. This Amendment shall become effective immediately upon its execution and delivery by the Trustee and the Company, except that clause (vi) of the definition of Investments set forth in paragraph 3 of this Amendment shall not become effective until such time as the Company shall have delivered to the Original Purchasers the following documents:

(i) satisfactory written evidence that the Company has a commitment from an investor to purchase from the Company not less than \$10,000,000 in newly issued equity securities;

(ii) an opinion of Messrs. Heller, Ehrman, White & McAuliffe in form and substance satisfactory to the Original Purchasers and their special counsel to the effect that the execution, delivery, and compliance with the terms of this Amendment does not violate Regulation G or X of the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 207 and 224); and


(iii) satisfactory written evidence that the Company has obtained, to the extent necessary, any consents, waivers or amendments under any other debt or equity agreements limiting the Company's ability to make the

investment described in clause (vi) of the definition of Investments.


IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their corporate seals, duly attested, to be hereunto affixed as of the date first above written.

[Corporate Seal]

Attest:

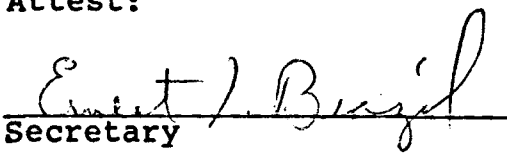

Assistant Secretary
TRUST OFFICER

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Trustee

By: 
Trust Officer

[Corporate Seal]

Attest:


Secretary

BRAE CORPORATION

By: 
President

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

SS.:

On the 12th day of April, 1980, before me personally came P. J. CROOKS, to me known, who, being by me duly sworn, did depose and say that he resides at 70 Ferry Street, Lambertville, New Jersey; that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the above amendment; that he knows the corporate seal of said corporation; that the seal affixed to said amendment is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

Maureen McShane

Notary Public

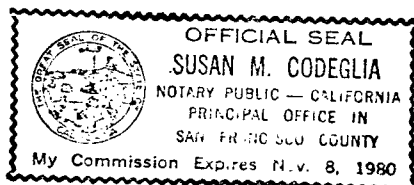
MAUREEN McSHANE
NOTARY PUBLIC, State of New York
No. 01MC4649500
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1981

[Notarial Seal]

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF SAN FRANCISCO)

SS.:

On the 25th day of April, 1980, before me personally came WILLIAM J. TEXIDO, to me known, who, being by me duly sworn, did depose and say that he resides at 69 Almedral Avenue, Atherton, California; that he is the President of BRAE CORPORATION, one of the corporations described in and which executed the above amendment; that he knows the corporate seal of said corporation; that the seal affixed to said amendment is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.



[Notarial Seal]

Susan M. Codeglia
Notary Public